

§ 205.311 USDA Seal.

(a) The USDA seal described in paragraphs (b) and (c) of this section may be used only for raw or processed agricultural products described in paragraphs (a), (b), (e)(1), and (e)(2) of § 205.301.

(b) The USDA seal must replicate the form and design of the example in figure 1 and must be printed legibly and conspicuously:

(1) On a white background with a brown outer circle and with the term, "USDA," in green overlaying a white upper semicircle and with the term, "organic," in white overlaying the green lower half circle; or

(2) On a white or transparent background with black outer circle and black "USDA" on a white or transparent upper half of the circle with a contrasting white or transparent "organic" on the black lower half circle.

(3) The green or black lower half circle may have four light lines running from left to right and disappearing at the point on the right horizon to resemble a cultivated field.



Figure 1

§§ 205.312-205.399 [Reserved]

Subpart E—Certification

§ 205.400 General requirements for certification.

A person seeking to receive or maintain organic certification under the regulations in this part must:

(a) Comply with the Act and applicable organic production and handling regulations of this part;

(b) Establish, implement, and update annually an organic production or han-

dling system plan that is submitted to an accredited certifying agent as provided for in § 205.200;

(c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in § 205.403;

(d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program's governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in § 205.104;

(e) Submit the applicable fees charged by the certifying agent; and

(f) Immediately notify the certifying agent concerning any:

(1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and

(2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.

§ 205.401 Application for certification.

A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information:

(a) An organic production or handling system plan, as required in § 205.200;

(b) The name of the person completing the application; the applicant's business name, address, and telephone number; and, when the applicant is a corporation, the name, address, and telephone number of the person authorized to act on the applicant's behalf;

(c) The name(s) of any organic certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of

Agricultural Marketing Service, USDA

§ 205.403

noncompliance or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the noncompliances noted in the notification of noncompliance, including evidence of such correction; and

(d) Other information necessary to determine compliance with the Act and the regulations in this part.

§ 205.402 Review of application.

(a) Upon acceptance of an application for certification, a certifying agent must:

(1) Review the application to ensure completeness pursuant to § 205.401;

(2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part;

(3) Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance or denial of certification, pursuant to § 205.405, has submitted documentation to support the correction of any noncompliances identified in the notification of noncompliance or denial of certification, as required in § 205.405(e); and

(4) Schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or handling operation may be in compliance with the applicable requirements of subpart C of this part.

(b) The certifying agent shall within a reasonable time:

(1) Review the application materials received and communicate its findings to the applicant;

(2) Provide the applicant with a copy of the on-site inspection report, as approved by the certifying agent, for any on-site inspection performed; and

(3) Provide the applicant with a copy of the test results for any samples taken by an inspector.

(c) The applicant may withdraw its application at any time. An applicant who withdraws its application shall be liable for the costs of services provided up to the time of withdrawal of its application. An applicant that voluntarily withdrew its application prior to

the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

§ 205.403 On-site inspections.

(a) *On-site inspections.* (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2) (i) A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this part.

(ii) The Administrator or State organic program's governing State official may require that additional inspections be performed by the certifying agent for the purpose of determining compliance with the Act and the regulations in this part.

(iii) Additional inspections may be announced or unannounced at the discretion of the certifying agent or as required by the Administrator or State organic program's governing State official.

(b) *Scheduling.* (1) The initial on-site inspection must be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of subpart C of this part: *Except, That,* the initial inspection may be delayed for up to 6 months to comply with the requirement that the inspection be conducted when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed.

(2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is